

FILED

JUN 25 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAMUEL ALLEN DUBYAK,

Petitioner,

vs.

BEN CURRY, Warden,

Respondent.

No. C 08-0667 JSW (PR)

**ORDER DENYING MOTION FOR
STAY; TO SHOW CAUSE**

(Docket No. 3)

Petitioner, a prisoner of the State of California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the Board of Parole Hearings' decision to deny Petitioner parole. On May 7, 2008, the Court ordered Respondent to show cause why the petition should not be granted based on Petitioner's cognizable claims. Instead of filing an answer or motion to dismiss, as Respondent was ordered to do, Respondent filed a motion to stay this case indefinitely, pending the issuance of a decision in *Hayward v. Marshall*, 512 F.3d 536 (9th Cir.), *reh'g en banc granted*, No. 06-55392, slip op. at 1 (9th Cir. May 16, 2008).

Respondent asserts that a stay is warranted on basis of judicial economy because *Hayward* "may" decide various issues applicable to this case. It is an abuse of discretion for a district court to stay a habeas petition indefinitely pending resolution of a different case involving parallel issues on the basis of judicial economy and to prevent an intra-district split in decisions. *Yong v. INS*, 208 F.3d 1116, 1120-22 (9th Cir. 2000).

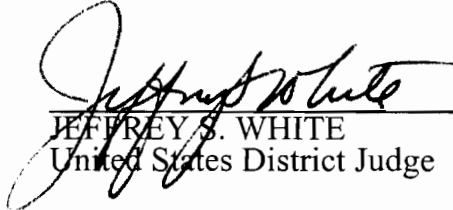
1 Accordingly, the motion for a stay is DENIED.

2 Within **60 days** of the date this order is filed, Respondent shall comply with the
3 May 7, 2008 Order to Show Cause.

4 This order terminates Docket No. 3.

5 IT IS SO ORDERED.

6 DATED: JUN 25 2008

7 
JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SAMUEL ALLEN DUBYAK,
Plaintiff,

Case Number: CV08-00667 JSW

CERTIFICATE OF SERVICE

v.


BEN CURRY et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 25, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Samuel Allen Dubyak - D54700
CTF-Central
P.O. Box 689
Soledad, CA 93960-0689

Dated: June 25, 2008


Richard W. Wieking, Clerk
By: Monica Narcisse, Deputy Clerk